THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21310 OF 2006

DATED 13th OCTOBER, 2006

BETWEEN

Dr G.V.Suryanarayana Rao

… Petitioner

and

The Special Chief Secretary to Government, Revenue Department, Andhra Pradesh, Hyderabad and others.

… Respondents

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ORDER:

The petitioner's father late Sanyasi Rao was an ex-serviceman and he was allotted/assigned land admeasuring Acs.5.05 cents in Survey No.158/6 situated in Kommadi village of Madhurawada in Visakhapatnam District in 1971. The property was allegedly bequethed to the petitioner under a Will, dated 12.05.1980. When the assignment was cancelled, the petitioner filed the writ petition being W.P.No.14035 of 1984 before this Court. The cancellation order was set aside observing that revenue authorities should follow due process of law. Thereafter, the third respondent again cancelled the assignment on 30.04.1992. The petitioner submitted a representation to the Government, which set aside the order of the third respondent vide their orders in G.O.Rt.No.1909, dated 17.12.1992. Thereafter, the pattadar pass books were also issued in favour of the petitioner.

The Government of Andhra Pradesh issued G.O.Ms.No.581, dated 04.05.2005 in purported exercise of powers under Section 22-A of the Registration Act as amended by Registration (A.P.Amendment) Act, 1999, which empowered the State Government to prohibit registrations in public interest. The petitioner, therefore, filed the instant writ petition seeking a declaration that inclusion of the land in survey Nos.158/6 assigned in favour of the ex-serviceman in the notification vide G.O.Ms.No.581 as illegal and arbitrary. It is also alleged that there is a threat of dispossession.

In **State of Rajasthan v Basant Nahata**[1], the Supreme Court struck down the provision in Registration Act as amended by the State of Rajasthan as *ultra vires.* Following the same, a Division Bench of this Court in its Judgment, dated 07.12.2005 in W.P.No.14099 of 2003 and batch struck down Section 22-A of the Registration Act as applicable in State of Andhra Pradesh. It is also brought to the notice of this Court that Special Leave Petition filed by the State Government against the said judgment was also dismissed by the Supreme Court on 11.08.2006. Therefore, the impugned notification cannot be

sustained.

In view of the Judgment of the Supreme Court as well as this Court in W.P.No.14099 of 2003, Section 22-A of the Registration Act itself has been declared *ultra vires* and therefore, Government Order issued in exercise of powers under Section 22-A of the Registration Act cannot be enforced nor the petitioner can be dispossessed under the said Government Order. Even if for any reason the petitioner has to be dispossessed, the respondents have to follow necessary procedure under law. By reason of the assignment, which has also been ultimately confirmed by the Government, the petitioner who allegedly got the property under a Will must be held to have all rights to the property including right to alienate the property.

The writ petition, with the above observations, is disposed of. No costs.

(V.V.S.RAO,J)

13.10.2006.
pln

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[1] (2005) 12 SCC 77 = 2005 AIR SCW 4456